

REMARKS

The last Office Action has been carefully considered.

It is noted that claims 1-7 and 10 are rejected under 35 U.S.C. 102(b) over the patent to Smith.

Claims 1-10 are rejected under 35 U.S.C. 103(a) over the patent to Phelps in view of the patent to Chen.

Also, the claims are rejected under 35 U.S.C. 112.

In connection with the Examiner's rejection of the claims, applicants have canceled claims 1-5 and submitted claims 11 and 13 which are independent claims, claim 12 which depends on claim 11 and amended the retained claims to depend on claim 11.

It is respectfully submitted that the new features of the present invention which are defined in claims 11 and 13 are not disclosed in the references and can not be derived from them as a matter of obviousness. Claim 11 specifically defines that the holding element is turnable relative to

the attaching element, one of the elements is provided with a plurality of formations spaced from one another while the other element is provided with a counter formation engageable with the first mentioned formations. These features are common for claim 11 and claim 13. Claim 11 additionally defines that one of the elements has a displaceable part on which the counter formation is formed, so that the displaceable part can displace with the counter formation to allow it to move over the first mentioned formations, and in this position the holding element is fixed relative to the attaching element by introduction of the showerhead into the holding element. Claim 13 simply defines that the position of the holding element relative to the attaching element is fixed by introduction of the showerhead.

Turning now to the references and in particular to the patent to Smith it can be seen that it discloses a laboratory clamp. It does not provide any teaching of a displaceable part of a holding element which carries a counter formation engageable with the formations of the attaching element and formed on a displaceable part, so that when the object is introduced into the holding element the displaceable part can not displace any longer, the position of the holding element relative to the attaching element is fixed.

Also, the fixation of position of the holding element relative to

the attaching element by introducing a showerhead (object) into the holding element is not disclosed in this reference as well.

The original claims were rejected over this reference under 35 U.S.C. 102(b). It is respectfully submitted that this rejection should be considered as no longer tenable with respect to claims 11 and 13. As was stated in *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) in which it is stated:

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."

Definitely, the reference does not disclose all elements of claims 11 and 13 in their specific order as well as in their interaction and interjunction.

It is therefore believed that the anticipation rejection of the original claims should be considered as no longer tenable with respect to claims 11 and 13.

The patents to Phelps and Chen also do not teach the new features of the present invention as defined in claims 11 and 13. These

references do not disclose a displaceable wall on one of the elements, which carries at least one formation engageable with a plurality of formations, and becomes non-displaceable by introduction of an object into the holding element. They also do not teach the attaching element and the holding element fixable with one another turnably connectable with one another by interengagement of a plurality of formations with at least one counter formation, wherein the position of the elements is fixed by introduction of a showerhead into the holding element.

As for the original rejection of the claims as obvious over the combination of these references, it is respectfully submitted that in order to arrive at the applicant's invention from the references, it is not sufficient to combine them, since the references have to be fundamentally modified, in particular by introducing into them the new features of present invention which are now defined in claims 11 and 13. It is known that in order to arrive at a claimed invention, by modifying the references the cited art must itself contain a suggestion for such a modification.

This principle has also been consistently upheld by the U.S. Court of Customs and Patent Appeals which, for example, held in its decision in *re Randol and Redford* (165 USPQ 586) that

Prior patents are references only for what they clearly disclose or suggestion; it is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

Definitely, the references do not contain any hint or suggestion for such modifications.

It is also believed that the present invention as defined in claims 11 and 13 provides for the highly advantageous results. In particular, by simple introducing a showerhead into the holding element, the position of the holding element relative to the attaching element and thereby the position of the showerhead relative to the wall to which the attaching element is attached is easily and reliably fixed.

It is well known that in order to support a valid rejection the art must also suggest that it would accomplish applicant's results. This was stated by the Patent Office Board of Appeals, in the case *Ex parte Tanaka, Marushima and Takahashi* (174 USPQ 38), as follows:

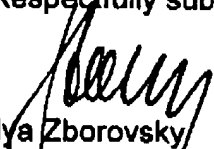
Claims are not rejected on the ground that it would be obvious to one of ordinary skill in the art to rewire prior art devices in order to accomplish applicants' result, since there is no suggestion in prior art that such a result could be accomplished by so modifying prior art devices.

In view of the above presented remarks and amendments, it is believed that claims 11 and 13 should be considered as patentably distinguishing over the art and should be allowed.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-243-3818).

Respectfully submitted,


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